

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

SUSAN BERG/BERG, M.D.,

Cause No. CV 07-140-BLG-RFC-CSO

Plaintiff,

vs.

SPOKANE POLICE & FIRE, et. al.,
COMMITTEE, et. al.,

FINDINGS AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE TO DISMISS COMPLAINT
WITHOUT PREJUDICE

Defendants.

On February 19, 2008, this Court issued an Order directing Plaintiff to show cause why this matter should not be dismissed for failure to timely serve the Complaint upon the Defendants. (Court's Doc. No. 6). The Order was initially sent to Plaintiff at her Billings and Washington, D.C. addresses. When Plaintiff filed a Notice of Change of Address on February 19, 2008, the same day that the Order to Show Cause was filed, the Clerk's office re-sent a copy of the Order to Show Cause to Plaintiff at her Philadelphia, PA. address.

Although Plaintiff has filed an Amended Complaint (Court's Doc. No. 12) and a Supplement to her Complaint (Court's Doc. No. 14) since the Court issued the Show Cause Order, and although both of these pleadings show the Philadelphia address as her current address, Plaintiff did not respond to the Court's Order. She has provided no proof of serving the Complaint upon Defendants and has not requested additional time in which to do so.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The Court has complied with Rule 4(m) by providing Plaintiff notice of its intent to recommend dismissal if Plaintiff failed to provide proof of service. Plaintiff has not made any attempt to show good cause for her failure.

Therefore, the Court enters the following:

RECOMMENDATION

Plaintiff's Complaint should be **DISMISSED WITHOUT PREJUDICE.**

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), Plaintiff may serve and file written objections to this Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de

novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

DATED this 1st day of April, 2008.

/s/ Carolyn S. Ostby
Carolyn S. Ostby
United States Magistrate Judge